

1 credit for time served by reducing a defendant's sentence under §
2 5G1.3(b). Under § 5G1.3(b), the court may reduce a defendant's
3 sentence for time already served on an another undischarged term of
4 imprisonment if the court determines the Bureau of Prisons will not
5 credit that time toward the defendant's sentence. *Drake*, 49 F.3d
6 at 1440. For § 5G1.3(b) to apply, the undischarged sentence must
7 have "resulted from another offense that is relevant conduct to the
8 instant offense of conviction under the provisions of subsections
9 (a) (1), (a) (2), or (a) (3) of § 1B1.3 (Relevant Conduct) and that
10 was the basis for an increase in the offense level for the instant
11 offense under Chapter Two (Offense Conduct) or Chapter Three
12 (Adjustments)." U.S.S.G. § 5G1.3(b) (emphasis added). Given
13 defendant's arguments in his motion and his citation to *Dorsey*, the
14 court construes defendant's motion for pretrial credits as a motion
15 for the court to modify or correct his sentence on the basis of §
16 5G1.3(b).

17 Generally, the court lacks authority to modify a term of
18 imprisonment once it has been imposed, but exceptions exist. See
19 18 U.S.C. § 3582(c). The only exception arguably applicable to
20 defendant's case at this time is § 3582(c) (1) (B), which allows the
21 court to modify a sentence "to the extent otherwise expressly
22 permitted by statute or by Rule 35 of the Federal Rules of Criminal
23 Procedure."

24 Rule 35(a) allows the court to correct a sentence within seven
25 days after sentencing for arithmetical, technical, or other clear
26 error. As more than seven days have passed since defendant was
27 sentenced, the court lacks the authority to modify defendant's
28 sentence under Rule 35(a). Rule 35(b), which allows for a

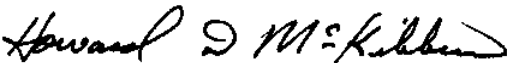
1 reduction of sentence for substantial cooperation upon motion of
2 the government, clearly does not apply to defendant's motion.
3 While the court may also correct a sentence under 28 U.S.C. § 2255,
4 the court sees nothing in defendant's motion to suggest he intended
5 to assert a claim under § 2255.

6 At any rate, even if the court could grant defendant relief,
7 it does not appear from the record that he is entitled to it. For
8 § 5G1.3(b) to apply, the undischarged sentence must be based on an
9 offense that was relevant conduct to the charge in this case. The
10 undischarged state sentence defendant was serving while awaiting
11 prosecution and sentencing in this case was not based on an offense
12 that was relevant conduct to the charge in this case.

13 Defendant's motions (#46, #48) are therefore **DENIED**.

14 IT IS SO ORDERED.

15 DATED: This 27th day of February, 2013.

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18 UNITED STATES DISTRICT JUDGE
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